



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/776,969

02/11/2004

Yann Le Gal

1759.154

3181

23405

7590

10/30/2006

HESLIN ROTHENBERG FARLEY & MESITI PC
5 COLUMBIA CIRCLE
ALBANY, NY 12203

EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT

PAPER NUMBER

3782

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/776,969

Applicant(s)

LE GAL ET AL.

Examiner

Jack H. Morgan

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/11/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

If applicant desires to claim the benefit of a prior-filed application under 35 U.S.C. 119(e), a specific reference to the prior-filed application in compliance with 37 CFR 1.78(a) must be included in the first sentence(s) of the specification following the title or in an application data sheet. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications.

If the instant application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable

Art Unit: 3782

petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the wings of claim 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the

Art Unit: 3782

description: 7b, referring to wings on page 6 of the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 3782

3. Claims 1-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 6, 10-17 of copending Application No. 10/811718. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the current application are met by the invention of the copending application.

In regards to claim 1, copending application (10/811718) claim 1 has a device for carrying a load and adjusting the position of said load, comprising first and second means of positional control and adjustment, using manual remote controls, a first means for raising the back frame in respect to the harness, and a second means to lower it in respect to the harness, where the back frame receives an endless belt, and also has a locking means tensioned by the second control means. Copending application claim 6 meets the further limitations of the applicant's claim wherein the second means including a strap (cable) being associated with a control handle. Copending application claim 11 meets the further limitations of the applicant's claim by attaching the second means' strap is secured to the endless belt.

In regards to claim 2, claim 2 of copending application is equivalent, having a first adjustment means comprising a non-elastic pulling means, a first end located on the lower part of the back frame with gripping means and the other end being fixed to the harness.

In regards to claim 3, claim 4 of the copending application is equivalent, having an endless belt kept in tension which is free to roll and positioned with respect to an

upper return means fixedly located on an upper part of the back frame, and a second lower return means fixedly located on the lower part of the back frame.

In regards to claim 4, claim 10 of the copending application is equivalent, having upper return means, a shell part, a lower pin holding an endless belt and an upper pin for returning the strap, a third pin around which is mounted a locking mechanism formed of a lever pivoting in opposition to an elastic return means, said lever having a serrated profiled shape.

In regards to claim 5, claim 11 of the copending application is equivalent, having an end of a strap associated with a pulling tongue, said strap being arranged between the back frame and the strand of the endless belt.

In regards to claim 6, claim 12 of the copending application is equivalent, having the lower end of the endless belt mounted around a pin of a buckle fastening including a second pin around which is wound a loop whose lower end is secured to the back frame.

In regards to claim 7, claim 13 of the copending application is equivalent, having a third return means of the hairpin spring type mounted on the third pin, where one of the legs of the third return means bears on a bearing wall formed by the upper return means and another leg, bearing on a rear face of the extension arm.

In regards to claim 8, claim 14 of the copending application is equivalent, having a strap return pin with a conical shape, allowing the strap to be oriented in an oblique position relative to the endless belt, and the strap having a width adapted to the profile of the pin.

In regards to claim 9, claim 15 of the copending application is equivalent, having a strap with a free-end strand for coupling with the control handle of the second means the handle being a gripping tongue of elastomeric material.

In regards to claim 10, claim 16 of the copending application is equivalent, having a strap which has a graduated scale defining relative positions of the back part and the harness.

In regards to claim 11, claim 17 of the copending application is equivalent, having a first return means with a cover to protect the locking mechanism, and where the front face of the cover has a window opposite the strap and its graduated scale.

In regards to claims 12-14, the rucksack as described in the copending application is equivalent to travel luggage, a backpack for outdoor pursuits and schoolbags, as these uses only involve what is placed inside the bag, not the structure of the bag.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claim 15 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6 and 11 of copending Application No. 10/811718 in view of Fiffer (US 3,799,414). The copending application discloses all the limitations of the claim except for the use of the adjustable carrying device applied to baby carriers. Fiffer discloses a baby carrier (fig 1) with an adjustable frame for the purpose of shifting the load on the back of the user. Therefore it would

Art Unit: 3782

have been obvious to use the adjustable carrying device of the copending application on a baby carrying apparatus as taught by Fiffer in order to adjustably carry a baby on one's back.

This is a provisional obviousness-type double patenting rejection.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gleason (US 6,179,188) and Jaeger (US 5,971,244).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3782

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack Morgan
AU 3782
October 26, 2006

SUPERVISORY PATENT EXAMINER
NATHAN J. NEWHOUSE


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER